DEFENCE

OF

BRIG. GEN'L WM. A. HAMMOND,

SURGEON GENERAL U. S. ARMY.

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SURGEON GENERAL U. S. ARMY.

The accused has been arraigned and tried upon the following charges and specifications:

Charges and Specifications preferred against Brigadier General William A. Hammond, Surgeon General United States Army.

CHARGE I.—"Disorders and neglects to the prejudice of good order and military discipline."

SPECIFICATION 1st.—"In this; that he, Brigadier General *William A. Hammond*, Surgeon General United States Army, wrongfully and unlawfully contracted for, and ordered Christopher C. Cox, as Acting Purveyor in Baltimore, to receive blankets of one William A. Stevens, of New York. This done at Washington city, on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two."

SPECIFICATION 2d—"In this; that he, Brigadier General *William A. Hammond*, Surgeon General as aforesaid, did, on the first day of May, in the year of our Lord one thousand eight hundred and sixty-three, at Washington city, wrongfully and unlawfully, and with intent to favor private persons, resident in Philadelphia, prohibit Christopher C. Cox, as Medical Purveyor for the United States, in Baltimore, from purchasing drugs for the army in said city of Baltimore."

SPECIFICATION 3d—"In this; that he, the said Brigadier General *William A. Hammond*, Surgeon General United States Army, did unlawfully order and cause one George E. Cooper, then Medical Purveyor for the United States in the city of Philadelphia, to buy of one William A. Stevens blankets, for the use of the Government service, of inferior quality; he, the said Brigadier General *William A. Hammond*, then well knowing that the blankets so ordered by him to be purchased as aforesaid were inferior in quality, and that said Purveyor Cooper had refused to buy the same of said Stephens. This done at Philadelphia, in the

State of Pennsylvania, on the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and sixty-two."

Specification 4th—In this; that he, the said Brigadier General *William A. Hammond*, Surgeon General as aforesaid, on the fourteenth day of June, in the year of our Lord one thousand eight hundred and sixty-two, at the city of Washington, in the District of Columbia, unlawfully, and with intent to aid one William A. Stephens to defraud the Government of the United States, did, in writing, instruct George E. Cooper, then Medical Purveyor at Philadelphia, in substance as follows:

'Sir: You will purchase of Mr. W. A. Stephens eight thousand pairs of blankets, of which the enclosed card is a sample. Mr. Stephens' address is Box 2500, New York. The blankets are five dollars per pair;' and which blankets so ordered were unfit for hospital use."

Specification 5th—"In this; that he, the said Brigadier General *William A. Hammond*, Surgeon General United States Army, on the sixteenth day of June, in the year of our Lord one thousand eight hundred and sixty-two, at the city of Washington, did corruptly, and with intent to aid one William A. Stephens to defraud the Government of the United States, give to the said William A. Stephens an order, in writing, in substance as follows: 'Turn over to George E. Cooper, Medical Purveyor at Philadelphia, eight thousand pairs of blankets;' by means whereof the said Stephens induced said Cooper, on Government account, and at an exorbitant price, to receive of said blankets, which he had before refused to buy, seventy-six hundred and seventy-seven pairs, and for which the said Stephens received payment at Washington in the sum of about thirty-five thousand three hundred and fourteen dollars and twenty cents."

Specification 6th—"In this; that he, the said Brigadier General *William A. Hammond*, Surgeon General United States Army, on the thirty-first day of July, in the year of our Lord eighteen hundred and sixty-two, at the city of Philadelphia, in the State of Pennsylvania, well knowing that John Wyeth & Brother had before that furnished medical supplies to the Medical Purveyor at Philadelphia which were inferior in quality, deficient in quantity, and excessive in price, did corruptly, unlawfully, and with intent to aid the said John Wyeth & Brother to furnish additional large supplies to the Government of the United States, and thereby fraudulently to realize large gains thereon, then and there give to George E. Cooper, then Medical Purveyor at Philadelphia, an order, in writing, in substance as follows: 'You will at once fill up your store-houses, so as to have constantly on hand hospital supplies of all kinds for two hundred thousand men for six months. This supply I desire that you will not use without orders from me.' And then and there directed said Purveyor to purchase a large amount thereof, to the value of about one hundred and seventy-three thousand dollars, of said John Wyeth & Brother."

Specification 7th—"In this; that he, the said Brigadier General *William A. Hammond*, Surgeon General United States Army, about the eighth day of October, in the year of our Lord eighteen hundred and sixty-two, at Washington city, in contempt of, and contrary to the provisions of, the act entitled 'An act to reorganize and increase the efficiency of the Medical Department of the Army,' approved April 16, 1862, did corruptly and unlawfully direct Wyeth & Brother, of Philadelphia, to send forty thousand cans of their 'Extract of Beef' to vari-

ous places, to wit: Cincinnati, St. Louis, Cairo, New York, and Baltimore, and send the account to the Surgeon General's Office for payment; and which 'Extract of Beef' so ordered was of inferior quality, unfit for hospital use, unsuitable and unwholesome for the sick and wounded in hospitals, and not demanded by the exigencies of the public service."

SPECIFICATION 8th—"In this; that he, the said Brigadier General *William A. Hammond*, Surgeon General United States Army, about the *first day of March*, in the year of our Lord eighteen hundred and sixty-three, at Washington city, in disregard of his duty, of the interests of the public service, and of the requirements of the act entitled 'An act to reorganize and increase the efficiency of the Medical Department of the Army,' approved April 16, 1862, did order and direct that the Medical Inspectors should report the result of their inspections direct to the Surgeon General."

CHARGE II.—"Conduct unbecoming an officer and a gentleman."

SPECIFICATION 1st—"In this; that he, Brigadier General *William A. Hammond*, Surgeon General United States Army, on the thirteenth day of October, in the year of our Lord eighteen hundred and sixty-two, at Washington city, in a letter by him then and there addressed to Dr. George E. Cooper, declared in substance that the said Cooper had been relieved as Medical Purveyor in Philadelphia because, among other reasons, 'Halleck,' meaning Major General Henry W. Halleck, General-in-Chief, requested, as a particular favor, that Murray might be ordered to Philadelphia; which declaration so made by him, the said Brigadier General *William A. Hammond*, Surgeon General as aforesaid, was false."

An additional charge and specifications preferred against Brigadier General *William A. Hammond*, Surgeon General United States Army:

CHARGE III —"Conduct to the prejudice of good order and military discipline."

SPECIFICATION 1st—"In this; that he, the said Brigadier General *William A. Hammond*, Surgeon General United States Army, on the 8th day of November, A. D. 1862, at Washington city, did, unlawfully and corruptly, order and cause Henry Johnson, then Medical Storekeeper and Acting Purveyor at Washington city, to purchase three thousand blankets of one J. P. Fisher, at the price of $5.90 per pair, and to be delivered to Surgeon G. E. Cooper, U. S. A., Medical Purveyor at Philadelphia."

SPECIFICATION 2d—"In that he, the said Brigadier General *William A. Hammond*, about the 3d day of December, A. D. 1862, at Washington city, unlawfully and corruptly purchased, and caused to be purchased, of J. C. McGuire & Co., large quantities of blankets and bedsteads, and which were not needed for the service."

BY ORDER OF THE PRESIDENT OF THE UNITED STATES:

Judge Advocate General.

In submitting to the consideration of the Court a case which has occupied nearly three months of incessant labor, and has been stretched by the prosecution over a very extensive field of enquiry, the accused feels that a few prefatory words may not be inappropriate.

The patient and courteous attention the Court has given to the case, justifies him in the expectation that they will weigh carefully, and with candid minds, the views of the law and the testimony it becomes his duty to develop, and he hopes that beyond this, they will appreciate the peculiar circumstances surrounding and influencing his responsible and greatly complicated duties, which he thinks should be measured by no contracted rule deduced from the past experience of the service, but ought to be estimated in the light of a new and suddenly developed necessity, which, taxing to the utmost the resources of the country itself, devolved upon the Department over which the accused was called to preside, duties and responsibilities to which its previous machinery was very inadequate, and which demanded prompt and energetic action. The accused is very far from indulging in any self-laudation, but common justice he thinks requires that whatever there was peculiar in the surroundings of his official position should be fairly considered. A system of administration adequate to supply the wants of less than twenty thousand men during a time of unbroken peace, stands in striking contrast to the requirements of a Department called upon to minister to the myriad wants of a million of men. It was likewise essential that as this great country in its struggle against rebellion had attracted the regards and admiration of the world by the rapid and wonderful development of its resources in all other branches of the national service, the administration of its Medical Department should also be equal to its new experience, and that the soldiers of the State should not only go into the field fully supplied with medical stores, but that in camp and hospital, on the field and in the bureau, our system and its practical working should at least be equally efficient with that of any of the leading European nations, of whose experience in frequent and protracted wars we had become the heritors.

It was, therefore, with no little ambition thus to administer his Department, and with large views of his duties and responsibilities that the accused went into office.

In his construction of the powers conferred upon him by the law, the then existing regulations, themselves law, and the former practice of the Bureau itself, he does not consider himself mistaken; for his experience has but the more strongly satisfied him that for the energetic and thoroughly intelligent administration of the Surgeon General's office, there should be resident in that officer the power of prompt action, when circumstances, sudden in their origin and in the very nature of things known to him in advance of, and more completely than to his subordinates, require such action. He will presently fully discuss the law of the case, and trusts to make clear to the Court the correctness of the view by which he has been governed. Before doing this, however, he has a single reference to make to the imputations upon his official integrity and personal honor involved in the charges and specifications upon which he has been tried.

To lose an official position, even though it be as high and honorable as the one he holds, is of small relative importance; but to have a reputation hitherto unstained and unsuspected, held up to the notice of his fellow-citizens and the scrutiny of his military peers, upon allegations of fraud, corruption, and even of personal untruthfulness, is more difficult to bear. Upon this part of the case he points to the twenty-four hundred pages of record before you, on which it has been sought to impress the proof of his corrupt conduct, and he invites to it your closest scrutiny, in the absolute confidence of an integrity of purpose and conduct its volumes fully vindicate in despite of a prosecution that has spared no labor to convict, and of the marked peculiarities of which he will not at this time trust himself further to speak.

The moment that he found that his official conduct was called into question, he sought with earnest and persistent effort for this opportunity of vindication, and he has been sedulously careful to invite the fullest scrutiny of all that he

has done. He has desired neither evasion nor concealment, and he now submits his case to the consideration of the Court, whose members can have no feeling beyond the soldierly desire to reach such conclusions as may be justified by the substantial merits of the case.

At the very threshold of the enquiry then we are met by the question: What are the powers and duties of the Surgeon General?

The first charge is "disorders and neglects to the prejudice of good order and discipline."

And the first specification is that the accused "wrongfully and unlawfully contracted for and ordered Christopher C. Cox, as Acting Purveyor in Baltimore, to receive blankets of one William A. Stephens of New York. This done at Washington City, on the seventeenth day of July, in the year of our Lord, one thousand eight hundred and sixty-two."

It is sufficient for the present enquiry to take the order of the Surgeon General, p 34 of the record, as the basis of this specification, without enquiring as to what preceded it, but for the purpose of the argument assuming that this was the first step leading to the order given by Dr. Cox to Stephens, on the 38th page of the record. With this must also be associated two other facts; first the telegram from Dr. Cox to the Surgeon General, dated 2nd July, 1862, on page 00, and the telegram of Dr. Cox to Mr. Stephens, on the 4th of July, 1862, page 00, and that the blankets were good and at a fair price.

The facts will then appear in substance as follows: Dr. Cox had received an order to send a supply of blankets to Fortress Monroe. He had none on hand, and could not procure them in Baltimore, and sent an agent to New York to get them. Of these facts he informed the Surgeon General by telegram of the 2nd of July, 1862. On the 3d of July he telegraphed Stephens in New York to send them—on the 4th he telegraphed him not to send them, as he was supplied. He did not communicate these two last telegrams or the fact that he was supplied to the Surgeon General.

On the 10th of July the Surgeon General ordered him to purchase from Stephens.

The question is, had the Surgeon General power by law to *direct* this purchase.

The act under which the accused was appointed to office, to wit: the act of 16th of April, 1862, does not *create* the office of Surgeon General, nor does it define or limit his powers, except in some two or three particulars; nor does it prescribe the mode of action for the powers which he may lawfully exercise.

The 2d section provides "that the Surgeon General to be *appointed* under this act shall have the rank, pay and emoluments of a Brigadier General. There shall be one Assistant Surgeon General, and one Medical Inspector General of hospitals; * * and the Medical Inspector General shall have, *under the direction of the Surgeon General*, the supervision of all that relates to the sanitary condition of the army, * * * *under such regulations as may hereafter be established.*

Section 3d. There shall be eight Medical Inspectors, * * who shall be charged with the duty of inspecting, * * and who shall report to the Medical Inspector General under such regulations as may hereafter be established. * *

Section 4th. All these officers shall, immediately after the passage of this act, be appointed * * by selection from the medical corps of the army, or from surgeons in the volunteer service, without regard to their rank when so selected, and with sole regard to qualifications.

Section 5th. The Medical Purveyors shall be charged, *under the direction of the Surgeon General*, with the selection and purchase of all medical supplies. * * *In all cases of emergency* they may provide such additional accommodations for the sick and wounded of the army, and may transport such medical supplies as circumstances may render necessary, *under such regulations as may hereafter be established;* and shall make prompt and immediate issues upon *all special requisitions* made upon them under such circumstances by medical officers; and the special requisitions shall consist simply of a list of *the articles required*, the qualities required, dated and signed by the medical officers requiring them."

The substance of the whole act bearing upon the questions

involved in these issues has been inserted to avoid repetition when the question of the powers of the Surgeon General, involved in the 8th specification of the first charge, come to be considered.

It is thus clearly apparent that the Legislature, by this act, recognize the existing office of Surgeon General, and also the office of Purveyor. Neither of these offices is created by this law; both are embraced in its provisions.

The rule of interpretation, perfectly consonant with the plainest common sense, is settled. We are to look back for the law creating these offices, and defining the duties appurtenant to each.

The designation of the respective offices marks the duties appurtaining to them. The Surgeon General, unless there be some superior known to the law, implies the head of the Medical Department. The word purveyor means one who selects and purchases supplies, generally under the direction of another. A purveyor of the Medical Department carries with it the idea as inseparable from it, of an officer charged with the selection and purchase of medical supplies under the direction of the head of the Department, unless by law there is a restriction on the powers of that superior.

But we are not left to philological speculation on this subject. It has received judicial construction from the highest tribunal in the country whose decision is law until changed by constitutional legislation.

The office of Surgeon General was created by the act of 3d March, 1813, 3 Stat. at large, p. 819, 20; § 7, and "his powers and duties" were to "*be prescribed by the President of the United States.*" The office of Apothecary General was created by the same section, with like limitation as to his powers, but that office was dropped when the military peace establishment was reduced by the act of 2d March, 1821, 3d Stat. 616, § 10.

It is well settled as any other rule of construction, that when power is given to the President by law over any one of the several branches of the Executive Department, the head of such Department acts as the President, and orders issued, or regulations promulgated by him, are orders and regulations of the President.

Wilcox vs. Jackson, 13 Pet., 498: U. S. vs. Eliason, 16 Pet., 291: Williams vs. U. S., 1 How., 614, are all cases directly in point, and equally so is that of Freeman vs. U. S., 3 How., 556.

We have then the law creating the office, and express authority given to the President to define the powers and duties of the Surgeon General.

The earliest regulations on this subject which are now extant are those of Sept. 1818, issued "By order (signed) D. Parker, Adj. & Ins. Genl.," [which were added to in March 1819,] and an original copy of both of which is exhibited to the Court with this paper.

By the first paragraph the Surgeon General is made "the director and immediate accounting officer of the Medical Department. He shall *issue all orders, and instructions* relating to the professional duties of the officers of the Medical Staff; and call for and receive such reports and returns from them as may be requisite for the performance of his several duties.

The Apothecary General was, with his assistant, empowered to "purchase (according to an estimate therein provided for) *all medicines, &c., required for the public service of the army*"—(*p.* 4.)

This was the germ of the medical purveyorship. Thus the law continued to 1832, when new regulations signed, "By order of Maj. Genl. Macomb, R. Jones, Adjt. Genl.," dated 13th Aug., were promulgated under authority of the War Department. The first paragraph of these is almost *totidem verbis*, that of the regulations of 1818. There were then in the service Medical Directors who were charged with almost the identical services by the act of 16th April, 1862, imposed on the Medical Inspectors, and they had to report, by the 2d paragraph, to the Surgeon General. The 13th paragraph, p. 5, contains the same provision as to medical supplies to be purchased by the Apothecary, as in the previous regulations.

The next regulations were issued in 1840 by J. R. Poinsett, Secretary of War.

The first paragraph is as follows: "The Surgeon General

is stationed at the city of Washington, and is *under the direction of the Secretary of War charged* with the administrative details of the Medical Department, and has complete control of all the officers belonging to it." The words in italics are, except in the designation of the officer, the words used in the 5th section of the act of 16th April, 1862, in giving the power of purchase, &c., to purveyors.

Paragraph 14, p. 3. *The Medical Purveyors will under the direction of the Surgeon General * * * purchase all* * (medical supplies.)

Here we have the same phraseology used in giving power to the Surgeon General under the direction of the Secretary of War, as is given to the purveyors in their office under the direction of the Surgeon General, and it would be exceedingly difficult, it is thought, logically impossible to make a distinction between the two.

In 1850, Sept. 25, new regulations were promulgated by C. M. Conrad, Secretary of War. The first sentence of the first paragraph of these regulations is copied from those of 1840. The second is as follows: "He will assign Surgeons and assistant Surgeons to regiments, posts, or stations, and will issue all orders and instructions relating to their professional duties, *and all communications from them, which may require the action of the Secretary of War, or the General commanding the army will be made direct to him.*"

In the 3d paragraph "He will require from the medical purveyors quarterly accounts current of moneys received and expended by them, with estimates of the funds required for the ensuing quarter; and the returns of articles received and issued with duplicates of the invoices of all supplies put up for, and delivered or forwarded to the several Surgeons or Assistant Surgeons of the army and the private physicians employed.

The 4th section provides still further for the accounting by the purveyors to him, and through him to, and with the Treasury Department.

The 5th that the Medical Directors shall report to him, &c.

Article 7, p. 10.—The Medical Purveyors *will, under the direction of the Surgeon General* * * purchase all medicines, hospital stores, &c., required for the Medical Department of the army, &c.

The 18th provides for the issuing of the supplies so provided by them.

The 19th and 20th for their accounting to the Surgeon General.

Thus stood the law, and the regulations under it, without any material modification of them at the passage of the act of the 16th April, 1862. There are regulations in 1856, '57, and '60, but they do not modify or change those already referred to.

We have seen how far that law in terms changed the law as it then stood in relation to the Surgeon General, and the Medical Purveyors. That it did not in *express terms* repeal it is beyond dispute. Did it effect such repeal by implication?

On this point there is scarcely room for the most severe and accurate criticism to raise a question of doubt. The case of Wood vs. the United States, 16 Pet., 362, in the Supreme Court, involved the question of the repeal of a law by implication, and if not conclusive is very instructive in this case. Judge Story delivering the opinion of the Court says, "The question then arises whether the 66th section of the act of 1799, ch. 128, is repealed, or whether it remains in full force. That it has not been expressly or by direct terms repealed is admitted; and the question resolves itself into the more narrow inquiry, whether it has been repealed by *necessary* implication. We say by *necessary* implication, for it is not sufficient to establish that subsequent laws covers some or even all of the cases provided for by it; for they may be merely affirmative, or cumulative, or auxiliary.—But there must be *positive repugnancy* between the provisions of the new laws, and those of the old; and even then the old law is repealed by implication only *pro tanto to the extent of such repugnancy.*"

The rule thus distinctly enunciated by the Supreme Court is directly, and especially applicable to this case. We have

here a statute, not creating an office, but providing for an office already existing, and prescribing a selection for that office from particular classes of persons; not prescribing the powers and duties of the officer, but necessarily implying them as well settled. There is therefore not only no repugnancy between the two laws, but an emphatic though silent recognition of the old law, both as to the Surgeon General, and the Medical Purveyor. Indeed the phraseology of the 5th Section is such as to admit of no doubt that Congress recognized the existence of the former law and regulations then in existence. For in the second sentence of that section they in terms provide new duties for the Purveyor, to be performed under such regulations as shall thereafter be established, recognizing the power of some superior authority to make regulations, and (indirectly) the existence of regulations under which all other duties were to be performed. Not a word is said of regulations in respect to the selection and purchase of supplies and their distribution generally; as to all such duties as were theretofore imposed by regulations on the purveyors, and which were necessarily subjects of regulation, without which indeed there could be neither system nor accountability. But these new duties were to be performed under new regulations thereafter to be established, so as to make the whole homogeneous and consistent, and to bring under one head all the administrative details of the department.

Every rule of interpretation combines to make the recognition of existing regulations part of the new law. The very phraseology of the act, the power of direction given to the Surgeon General and the power of selection and purchase under such direction are borrowed from the regulations then existing, and give an unmistakeable significance to the intention of the Legislature.

But this is not all. The Supreme Court, in the case of The United States *vs.* Freeman, 3 Howard, 364: have removed all doubt on this subject. They say "the correct rule of interpretation is, that if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them, and it is an established rule of law

that all acts in *pari materia* are to be taken together as if they were one law. *If a thing contained in a subsequent statute be within the reason of a former statute, it shall be taken to be within the meaning of that statute.*"

Nothing could be more apposite to the question under consideration. The reasons of the former statute creating the office and giving to the President the right to define and limit the powers and duties of the officer when the army was small and the country in the midst of peace and prosperity, have ten-fold more force and potency when applied to a condition of intestine war—when a million of men are in the field, and the country is torn with the fury of hostile armies; when the Medical Department is to be reorganized, and its powers and duties multiplied, and so vastly extended, and where the detail of its duties must depend on so many contingencies.

But the opinion proceeds at page 365. "If it can be gathered from a subsequent statute in *pari materia*, what meaning the Legislature attached to the words of a former statute they will amount to a *legislative declaration of its* meaning and will govern *the construction* of the first statute." Here too we find the same reason prevailing; for it is obvious that the Legislature in this last act intended to recognize the existence of regulations by which the Surgeon General was recognized as the head of the Department, having control over the purchase and distribution of the medical supplies.

Again at page 367 the Court says, "The Army regulations when sanctioned by the President, have the force of law, *because it is done by him by authority of law*," p. 366. "The President sanctioned those regulations, and by doing so, delegated his authority as he had a right to do to the Secretary of War."

It is impossible on these citations to escape from the conclusion that the Act of 16th April, 1862, left in full force the regulations then existing, and the power of the President to modify or repeal them.

Finally the same Court has said in The United States *vs.* Eliason, 16 Pet., 302: The Secretary of War is the regular constitutional organ of the President for the administration

of the Military establishment of the nation: and the rules and orders promulgated through him must be received as the acts of the Executive, and as such be binding on all within the sphere of his legal and constitutional authority.

Taking these rules as our guide, it cannot successfully be denied that the Surgeon General had the power to control the purveyors in their purchases; to *direct* what they should purchase, when they should purchase, from whom they should purchase; and prohibit them from purchasing at particular places or from particular persons. For the abuse of such authority he would be held amenable to the judgment of a Court Martial; for a proper and faithful exercise of it he is responsible to his country.

And such has been the received construction in the Department itself as is abundantly shown in this case, by the evidence in the record of the orders given by the Surgeon General Findley to purchase from the Wyeths and others.

But we go further. We maintain that he had authority in the exercise of a sound discretion to make purchases himself. For the power given him to direct the purveyors in their selection and purchase, implies the power in himself to make such purchases if he shall see fit. They are to be charged with the selection and purchase. But that is subordinate to the power of the Surgeon General to *direct* such selection and purchase, and included in that general authority to him as the less is included in the greater. And such, as is shown in this record by the contracts made by his predecessor, was the received construction of the office at the time of his accession to it. There must be something morally wrong, some bad motive, some corrupt intent, to subject him to trial for the exercise of the power.

The power given the purveyor is intended to be auxiliary to the authority granted to, and the duty imposed upon the Surgeon General, because it would be physically impossible for him in the multitude of the onerous duties imposed on him, to give his personal attention to the procuring of the supplies. It is not and was not intended to be an exclusive and independent power—nor is that required by the policy of the law, or the character of the duties with which they

are charged. It would be inconsistent with all the residue of the power granted to him so to construe it, and it is in all respects consistent with those powers to recognize him as the head having the power to do the thing and them as the agents acting under his directions.

Most of these positions apply with still greater force to the 8th specification of the first charge, as to his giving orders to the inspectors to report directly to him.

In the first place there was no Inspector General till August, 1862. From the time he did report for duty in August, 1862, he made no report to the Surgeon General except an annual report and reports on special duties, with which he was charged by the Surgeon General. Such is the distinct and positive proof on the record.

But this order is merely cumulative. It does not prohibit the Inspectors from reporting to the Inspector General. Its utmost scope is to obtain from them that information which every one must see was essential to the proper discharge of his duties in providing for the health of the soldiers, guarding against the dissemination of disease, administering to the relief of the sick and wounded, and which had previously by tacit custom been sent direct to him by the Inspectors. It is too apparent he had no other means of procuring the material knowledge so essential to the due administration of his office, and without which he would have been justly held to accountability for neglect or incapacity, and it fell within the necessary scope of his powers to require *from all his subordinates* every species of information which they could contribute to enable him to organize and carry out the schemes of medical treatment which daily experience enabled him to ripen and perfect. Moreover it is shown that at the time he so ordered the Medical Inspectors to report to him, the regulations which the law requires to give it effect had not been established.

As though the prosecution had anticipated this construction of the law, and to guard against a failure on that ground, they have followed up the first specification of the first charge by a second specification, charging that the accused not only wrongfully and unlawfully, but also with *intent to favor*

private persons resident in Philadelphia, did prohibit Christopher C. Cox, as Medical Purveyor for the United States in Baltimore, from purchasing drugs for the army in said city of Baltimore.

It is not specified who the private persons were in Philadelphia, thus intended to be benefitted, nor that Dr. Cox was prohibited from purchasing every where else except in Philadelphia, nor that he was directed to purchase from any particular individuals—it is he was prohibited from purchasing in Baltimore. Greater uncertainty, less precision, a broader net for the introduction of loose and irrelevant proofs under the cover of showing the intent have rarely been presented to a court, and the record shows it was availed of to an extent that is almost marvellous. Indeed in no other way could they have introduced the proof they have put upon the record of the arrangement made by the Sanitary Commission to supply the hospitals in and about Washington daily with fresh, wholesome marketing and vegetables, and by which they designed to show a collusion and injurious association to the injury of the patients between the accused and that noble charity. Fortunately for the accused, and the interests of humanity, that effort not only signally failed, and stands rebuked by the evidence of Dr. Abbott and Mr. Knapp, but it is clearly shown by the testimony of the latter that the accused did not favor the purchases in Philadelphia, preferred the market of Baltimore, and did not relinquish that preference until careful enquiry had shown that Philadelphia was more reliable and cheaper.

We come back then to the prohibition to Dr. Cox as the remaining ground of this specification. If we are right in the construction of the law, there is nothing in the evidence which has the weight of a feather in proving the intent charged.

It is beyond dispute that nearly a year before the time named in this charge,the accused had established five principal purchasing purveyorships, of which Baltimore was not one: that in despite of this order, which was publicly announced and of which Dr. Cox had notice, Dr. Cox continued to buy and to buy largely in Baltimore, while the accused was

laying up vast stores of hospital supplies in other cities where they could be more advantageously purchased, and whence they could be more conveniently distributed. That they could be purchased more advantageously in New York and Philadelphia is distinctly shown, both by the testimony of Surgeon J. R. Smith as to Philadelphia, and the concurrent testimony of the bills, and witnesses scattered through the record.

Now no rule is better settled both in the judicial forum and that of common sense and common justice in the application of evidence than that which prohibits the imputation of a wrong motive when a fair and honest one is equally apparent. We are not obliged to resort to the rule in this case, for it is proven that the order referred to in the specification was but intended to carry into effect the general order already mentioned, disregarded by Dr. Cox, to the extent, (as is shown from the tabulated statement of the amounts expended in the several cities certified from the office of the Surgeon General,) that after the promulgation of the order of May, 1862, establishing the purchasing depots, Dr. Cox actually purchased in Baltimore to an amount quite equal to the ratio of the purchases in Philadelphia and New York, taking either the population or the trade of the three cities as the basis of the calculation.

There is then not a shadow of suspicion, much less of direct proof in support of the first two specifications of the first charge, and it is confidently believed the 8th specification is equally groundless.

Before discussing in detail the testimony bearing on the different specifications, it is proper to exhibit the relation borne to the record by the chief witness of the prosecution, Surgeon George E. Cooper, late Medical Purveyor at Philadelphia. Upon his shoulders mainly rests the case of the Government. Smarting under rebukes administered in no hostile spirit, and attributing to the accused reflections upon his conduct with which he had nothing whatever to do, this Ajax of the prosecution came into Court, with a positiveness of statement, and an earnestness of testimony, that rapidly built up allegation after allegation, and his large memory of

events seemed as exhaustless as the constantly recurring necessities of the case.

It gives the accused no pleasure to exhibit this witness to the Court in his true colors, and he will indulge in no harsh words in connection with him, but let the record tell the story of his utter discredit. If in the face of the crushing testimony against him, the Court can by any possibility adjudicate this case on the basis of what he has said, the accused feels that he is simply wasting the time of the Court by a defence, for it will surely be difficult to find in the history of contested cases, an instance in which, in addition to the flagrant self-contradictions of the witness, such a mass of unimpeached testimony has borne a witness to the earth, as in this case.

At the beginning of his testimony, Dr. Cooper volunteers the statement that he received a present, through the accused, of whiskey from John Wyeth, with whom he was not acquainted, and that the accused at the same time asked him to recommend the Wyeths to Surgeon General Finlay. Frank Wyeth swears, on the contrary, that the whiskey was consigned to Cooper by them, through Adams' Express, and received by him, without any knowledge or agency of accused, and that the Wyeths had no need of recommendation to Dr. Finlay, to whom, on his own order, they had in the year previous, furnished over eighty thousand dollars worth of supplies.

Cooper says when he so recommended the Wyeths to Dr. Finlay, he did not know them, and afterward he swears he had formed the acquaintance of the Wyeths while in Baltimore, and before he had his interview with Dr. Finlay on the subject! He says that before he went to Hilton Head, he had known the Wyeths; then says he did not know Frank when he returned! He says that when he went to their store, on his return from Hilton Head, he had a conversation with John Wyeth, which Frank Wyeth flatly contradicts, and gives the conversation that passed on that occasion between *himself* and Dr. Cooper! He says that he bought everything from the Wyeths—"hospital stores, books, instruments, and everything else," all which he sub-

sequently reiterates; and yet later in the testimony he swears he got nothing but drugs and medicines of them!

He says he examined the liquors and teas at the West Philadelphia Hospital, and they were all bad; and Drs. Hayes, Baldwin and Rowe, who were the Surgeons in charge, contradict him, and testify that they were all used in the hospital service, for which they were fit, except a small lot of tea!

He says that *in the latter part* of the first week in June, 1862, Wm. A. Stevens brought to his office a sample of blankets of which he said he had 8,000 pairs, and when it became necessary to prove by Paton the value of these blankets, and Paton fixed as the latest day when he could have seen them at Cooper's office, *the second of June;* he produces a letter from Stevens to him of June 2d, stating that Hayes had the day before sent to him (Cooper) the sample blankets, together with a letter to himself (Stevens); while Stevens swears positively he never saw the sample of blankets so referred to! He swears that on the 15th June he wrote a letter to the accused, which he copied upon paper used in his office at Philadelphia, which copy he produces and puts on the record, and that the original of that letter was put away in a pigeon-hole of his desk, of which he generally carried the key, and to which his clerks had not access; while not one of his clerks ever saw any such paper in his office, all testifying to his unvarying use of a wholly different character of paper; they also proving that they had free access to his desk and drawers, and that they were never locked but when he had money in them on Saturdays! Besides all which Captain Elliot, one of them, and a confidential clerk, swears he had constant access to his desk, and frequently arranged the papers in the pigeon-holes!

He is positive in his recollection that he saw the accused in Philadelphia as early as July 29th, 1862, while Dr. J. R. Smith, as well as the letter on record of the 29th of July, and the telegram of the 30th, establish the fact that the accused had not at the time left Washington!

He says Magruder's requisition in August, was left by the accused at Wyeth's store to be put up and to be received, issued and paid for by him (Cooper,) that accused wrote on

it what was to be put up by Wyeth, and what by himself; and that said requisition was brought to him by Frank Wyeth, and that only after repeated requests: while Frank Wyeth positively swears that the requisition was left with him by accused because he had not time to go to Cooper's office, with instructions to take it to Cooper; and that he did so take it to him within a few hours after he received it, and that the order to furnish was given by Cooper.

He swears that he examined Tilden's Extract of Beef at a time when it is shewn by the proof it was not even manufactured. He swears that he gave no orders to Wyeth for Sulphate of Cinchonia, and we put on the record three!

He swears he traded his horse and saddle to John Wyeth for a horse and buggy, and that he did not return either horse or buggy—he then swears he did return the wagon, because he did not want to be under obligations to Wyeth; and then on re-examination he swears he returned it, because it was part of the bargain!

He swears he was buying of Paton, in June, 1862, ten pound white blankets, at 45 cts. a pound, and the proof is clear that there is no such thing known in the market as a ten pound white blanket, except for family use!

He *admits* that without the knowledge or consent of Dr. Murray, his successor in the office of purveyor, he caused to be copied by one of the purveyor's clerks, *a private letter* to Dr. Murray from Dr. A. K. Smith, which he says he found in his office, and which copy he was also bold enough to produce and put in evidence, because it seemed to bear on the case of the accused.

He swears that in a conversation with Medical Inspector Vollum, he did not use certain language of bitter hostility to the accused. And Inspector Vollum swears he did! He swears that he did not use language about the accused, also shewing his hostility in conversation with Dr. A. K. Smith; and yet Dr. Smith proves positively that he did! He swears that in connection with the letter to him from the Surgeon General of 13th October, he did not use in relation to the accused the words to which he was directly interrogated on cross examination; and Frank Wyeth proves that he shewed him that letter, and speaking of the accused, said,

"here's a letter from Bill Hammond, the g—d d—d son of a b—h, this goes to the Secretary of War to-night!" and the letter in question *a private letter* to him, at that!

But to repeat all the instances of similar contradictions and misstatements the record discloses would fatigue the Court, and the accused will only add two or three conclusive instances. Dr. Cooper swore with great positiveness that he never wrote a letter to the accused, bearing date June 16th, 1862, and subsequent to his interview with Stevens about the blankets, and that he received no communication from him in that connection, except the telegram of the 17th of June: he swears that in his interview with accused of 3d May, 1862, he was directed to make all his purchases from the Wyeths, and acted in obedience to such instructions, and that on the 31st of July he was instructed to purchase from them upwards of $200,000 of the requisition for two hundred thousand men, which he only obeyed in part; and yet we produce and put on the record *two letters from the accused to him*—one of date 17th June, and the other 29th July, 1862, and received by him on the 18th June and 30th July respectively, which utterly destroy all confidence in any of the statements so made by him.

As these letters not only bear directly upon the value and credibility of Dr. Cooper's testimony, but throw a flood of light over three of the principal specifications, we will briefly discuss the evidence by which their authenticity and the fact of their reception by Cooper are established. That they were pertinent and admissible as evidence the Court has in accordance with settled law, already decided.

Now, if we establish that these letters were written by the accused, and that they were received by Dr. Cooper at the time of the endorsements upon them, we add to the contradictions already indicated in the case of this witness and destroy any possible vestige of doubt as to his utter unreliability, because the letter of the 17th June, demolishes his sworn statement that he had written no letter to the Surgeon General on the 16th of June, or any letter in connection with the blanket transaction except those put on the record. That he must have written to the accused on the 16th of June about Stevens and the blankets, is clearly shewn by the

whole tenor of the reply of the Surgeon General of the 17th. It says, "I telegraphed you to-day *immediately* on receipt "of your letter to do as you thought best about Steven's "blankets. His offer to me was at $5, and I thought the "sample worth the money. I mentioned the price merely "that you should not pay more than that sum for them.— "Are you sure that those he offers at $4.60, are the same "that he asked me $5 for."

Now the only letter upon the record and sworn to by Cooper as having been written by him to the Surgeon General on the subject of these blankets, is the infamous one of the 15th of June, in which his bitterness of feeling to the accused finds vent in suggestions of the grossest insult to his superior officer, and which letter was never sent to or received by the accused, and which Cooper has sworn was copied by him on the blue lined paper "in use in his office," but which paper not one of his clerks, as they have proved, ever saw there, or heard of being there, and which copy he put away in one of the pigeon holes of his locked desk, which desk the same clerks prove was not kept locked but open to their free access, and to the pigeon holes of which, one of them, Captain Elliot had access and had frequently assorted the papers in it for Cooper; yet without ever seeing this copy, or anything whatever written upon the same character of paper.

This letter of June 15, *said not one word about the price of the blankets, offered to him by Stevens.*

That being the only letter then that according to Cooper's testimony he had written to the Surgeon General on this subject, *how was it possible for the accused to know on the* 17*th that Stevens had offered the blankets to him, Cooper, at* $4.60, *and how could the accused have written to Cooper on the* 17*th, "are you sure that those, he Stevens, offers at* $4.60 *are the same he asked me* $5 *for?"* and how could he have said further in the same letter, "whenever I send you orders to make particular purchases, it is of course with the full understanding on my part, that if you see any objections *you will refer the matter back to me for instructions,* AS IN THIS CASE."

The very text of the letter shews conclusively that after

Stevens had the interview with him about the blankets, *and for the first time*, Cooper learned anything about their price being $4.60, *which was on the morning of the 16th of June*, when as he swears himself and Stevens proves, $4.60 was named to him as the price, Dr. Cooper did write to the Surgeon General, naming the offer of Stevens and referring the matter of the purchase to his superior for instructions.

Immediately upon the receipt of this letter by the Surgeon General, follow in natural sequence, the telegram of the 17th June telling Cooper to do as he thought best about the blankets, and later in the same day this letter, more fully reiterating the substances of the despatch, and giving the views of the accused upon the subject. This is the natural, logical and unavoidable conclusion. But beyond all this, the testimony amounts to absolute proof, for we establish the letter of June 17th to be in the handwriting of the Surgeon General by five witnesses, all conversant with it, and we prove the endorsement of its receipt by Dr. Cooper to be in his handwriting by the same number of competent witnesses, who having been at the time the clerks in his office, and in daily and familiar contact with his handwriting, are the best witnesses that could have been produced on that point; and not resting there, we prove it to have been about the time stated in the endorsement in the possession of Dr. Cooper, by Captain Elliot who swears to that fact.

Against this overwhelming testimony, the prosecution in faint rebuttal, puts on the stand three or four highly respectable gentlemen, who have known Dr. Cooper at intervals for several years past, have had occasional correspondence with him, and who professing to be unable wholly to decipher the endorsement, do not, with the exception of Dr. Laub, express an opinion that it is not his writing, while one of them, Dr. Murray, rather inclines to the belief that it is, and even the expert who was called does not venture to say it is not; and then, "most lame and impotent conclusion," the Judge Advocate produces Dr. Cooper himself to disprove the whole matter, and he denies that he put the endorsement on the letter, but when sharply interrogated by the prosecution as to whether "he ever saw the letter while he was Purveyor in Philadelphia in June, 1862," he

goes on to quote to the Court various passages in the letter as "*being familiar to him,*" with the extraordinary statement that it is impossible for him to say whether he saw them in that letter or elsewhere, "but *they are familiar* to me!" They were familiar to him because they were in that letter, and because when he received it on the 18th of June and endorsed the fact of such receipt on its back, he read them in it, and it is sheer folly in the face of competent proof in a grave issue like this, to deduce from what Dr. Cooper says, anything but a reluctant confession of the fact that he had received the letter in question, which on repeated enquiry by the Judge Advocate he does not venture to deny. Some of these rebutting witnesses found it difficult to read the words of endorsement, because the pencilling had been so much rubbed out, and in this connection we only think it necessary to say that the clerks in Dr. Cooper's office at and before the date of the endorsement, Marochetti, Nesbitt, Hammond, Garigues, and Elliott, are all able to read it sufficiently to pronounce positively that Cooper wrote it.

The letter of July 29, 1862, is also conclusive in its refutation of the testimony of Dr. Cooper.

He has sworn the Surgeon General was in Philadelphia on the 29th of July. The letter shews that he was not. He has sworn that the first and only notice he had of the requisition of July 31st, was received through John Wyeth. The letter embodies a previous notice. He swears that on the 31st July he received instructions from the Surgeon General, to purchase from Wyeth & Bro. by far the largest part of that supply for two hundred thousand men. The letter shews that the accused desired that all articles should be bought from dealers, and states that the system of buying all from one person, which prevailed under the old regime, was not the correct principle, thus positively contradicting the alleged instructions Cooper swears he had given him to buy everything from the Wyeths.

That this letter was written by the accused is also fully established by the witnesses, who prove the letter of 17th June, and that it was endorsed as received on the 30th of July, by Dr. Cooper, is established by proof of his hand-

writing on its back; by Nesbitt, Hammond, Garigues, Marochetti, Elliot and Bower.

The fact of its receipt by Cooper is further established by Nesbitt, to whom Cooper read it at the time of its receipt; and by Elliot, who saw it in his possession; while Cooper himself, on being pressed by the Judge Advocate, to say whether or not he ever saw it while Purveyor at Philadelphia, does not venture, though denying the genuineness of the endorsement, to swear that he had not so seen it, but as in the case of the former letter of June 17th, gives his recollections of a passage from it, which he says "is familiar to him." The rebutting testimony on this point is equally inconclusive as in the previous case, from persons but slightly familiar with his hand-writing, while an examination of the testimony of the expert will shew the small value of his judgment based on comparison.

This witness, it may be remarked, gave his opinion from a recent comparison of the writing of Dr. Cooper, with no previous knowledge of its characteristics; never having seen him write, and never having corresponded with him. This species of proof is held in very slight esteem by many settled rulings, and its judicial value may be seen by reference among others to the case of "Gurney vs. Langlands," 5 Barnwell *vs.* Adolphus 930: where the Court upon argument held that the opinion of Inspectors of franks for the Post-office, *whether the writing is in a "natural or imitated character,"* is of little weight, and refused a new trial, asked on the ground of the rejection of such evidence.

The statement of Dr. Cooper as to his usually placing his endorsements of receipt at the bottom of the folded paper, may well enough apply to his public and purely official letters, but as this was not an official one, does not affect the positive testimony referred to.

With this commentary on the character of the evidence of the witness Cooper, and the degree of credit to which he is entitled, we proceed to examine the third specification of the first charge and the evidence adduced in support of it.

The gravamen of that specification is that the accused ordered and caused Cooper to buy the blankets from Stephens, (known in the record as the purchase from Hess, Kessel &

Co.,) he, the accused well knowing they were *inferior in quality*, and that Cooper had refused to buy them.

The only witness in support of this allegation is Cooper himself. Let us examine that testimony, not by the lights thrown upon it from various points to exhibit its value, but assuming that he is a disinterested credible witness.

Cooper says the samples of these blankets had been left by Stephens at Wyeth's, some days before the 28th of May, 1862; he had seen them and had declined to purchase them; that on the evening of 28th May, 1862, he saw the accused at Wyeth's; Wyeth asked him why he did not buy Stephens blankets; the accused turned to him and said, why don't you buy them Dr.? (p. 196.) *I said they are an assorted lot, and I don't want to buy different qualities of blankets to put in the hospitals.*" This is his direct, clear unembarrassed statement; not a word said about *inferior* qualities. But the Judge Advocate follows it up by a direct leading question, prompting the ready answer, did *you say anything of the quality?* A. "I said I was buying a *different* quality at a comparatively cheaper price." Not satisfied with the answer of his witness, the Judge Advocate presses him still further. Q. Better or worse? A. "Better." Now did he say this to the accused? Did he say he was buying a *better quality*, or a "*different*" quality? He says to the Judge Advocate, "better." But he does not say he said so to the accused. And this is made the more clear by what immediately follows on the same page, (196.) Was anything said about his having shown them to you before? A. "I stated that I had refused to buy them *because they "were an assorted lot."*

But to remove all doubt on this subject, we have but to turn to the cross examination, p. 389, he says, "I did say on that evening to the Surgeon General, that I did not like the blankets, *they were not the kind I was purchasing, and that they were comparatively dear,*" and at the bottom of p. 390, 391, in reply to the question whether anything "was said between the Surgeon General and yourself about the particular prices of the different qualities of the blankets?" He says "there was nothing said about that particularly, nothing but the general remark that they were comparatively dear;" and again, p. 392, my objection "was to their not

being of the kind I was using, and to their being comparatively dearer than what I could purchase." Now the gist of the allegation is that the Surgeon General well knew "*they were inferior in quality.*" The proof is he was told Cooper had refused to buy because he was buying a *different* quality, at a *comparatively* cheaper price, and because they were *an assorted lot*, they were *not the kind* he was purchasing, and were *comparatively* dear," and this repeated again and again. The proof comes far short of the specification. They may have been blankets of an excellent quality ; the price may have been a perfectly fair price, every word of the witness may be literally true, and the specification not proved. Cooper says he was buying "*better*" blankets, but he does not say he so told the accused, he only told him he was buying a different kind at a comparatively less price. Nor does Cooper anywhere say the blankets were in fact "*inferior*" in quality, but the extent is he could get those he liked better at a comparatively less price.

This however is all on the assumption that he has correctly reported his interview with the accused, and the direction he received from him. No one is here to contradict him. But there are strong circumstances in evidence tending to discredit the narative he has given.

The plain import of his testimony is that Stephens had left his sample blankets at Wyeth's and had rather importuned him to buy them ; that Stephens was a friend of the accused, and had supported or advocated in his paper "Vanity Fair," the pretensions of the accused to his present office ; that the accused being in the office at Wyeth's in the evening, Cooper passing through the store to see him, saw Stephens standing there, and passing him by entered the office and remarked that he saw the Vanity Fair man down stairs, I said he was the sub-Editor of Vanity Fair, and immediately John Wyeth, who was present, asked, "why don't you buy his blankets, Cooper?" and the accused said "why don't you buy them, Doctor?" After some remarks further, the accused said, "it is policy to keep the press on our side," and after some further talk, said "buy them ;" the next day Cooper saw Stephens at his office, and told him "I had been directed to purchase the blankets from him." The evident

intention of this ingeniously contrived story, is to create a belief that when Cooper came into the room, John Wyeth had been posting the accused about Stephens blankets, and the accused was ready and willing to oblige his supporter at the expense of the public interest.

The testimony of Stephens, unhappily for this pretty device, testimony which has no contradiction in any part of it, except by Cooper; coming from a man whose social position is well developed, and whose evidence will stand the severest scrutiny—the testimony of Stephens is destructive of some of its best points.

Mr. Stephens says he had only seen Cooper once before, and was introduced to him by John Wyeth; that he exhibited the samples of blankets to him, and Cooper did not refuse to buy them, but objected to them as an assorted lot; that he never objected to the quality or the price. On the evening in question, Cooper asked him to come to his office in the morning; that he had gone to Wyeth's that evening for medicine, and only saw Cooper as he was passing through the shop. The next morning he called at Cooper's office, and on his entering, Cooper closed the door, asked him to take a cigar and seat, and proposed to put his business through quick; that he did not say he had been directed to purchase the blankets, or anything of the kind, and the business was closed at once. Stephens says he had never seen the accused but once up to that time, nor did he see him again until long after that time; his interview was a brief one, and he had never written a line in the paper Vanity Fair, or any other, in support of the accused, and he did not know the accused was at Wyeth's when he went there, nor did he then see him.

Here, then, are direct, irreconcileable, contradictions between these two witnesses as to material facts, coloring the whole transaction, both of which cannot stand, and the record is full of conclusive evidence to show which is worthy of credit.

The gravamen of the 4th Specification is, that on June 14, 1862, the accused unlawfully and with intent to aid Stephens to defraud the Government of the United States, instructed Dr. Cooper, Purveyor at Philadelphia, to purchase from said

Stephens 8,000 pairs of blankets at $5 a pair, which blankets were unfit for hospital use; and the 5th Specification charges that the accused did on the 16th of June, 1862, corruptly and with intent to aid Stephens to defraud the Government, order in writing said Stephens to turn over to said Cooper, 8,000 pairs of blankets, by which means he induced Cooper on Government account, and at an exorbitant price, to receive 7,677 pairs of said blankets, which he had before refused to buy, and for which Stephens received $35,314.20.

The allegation of an intent to defraud, in the 4th Specification, is based entirely upon the charge that the blankets thus ordered to be purchased, were unfit for hospital use; and it is therefore only necessary to shew that they *were* fit for hospital use, and the specification is fully disproved. It is easy to do this, for the respective Surgeons to whom they were exhibited in the presence of the Court, testified to their fitness for such use, and Dr. Cooper alone denies it. We will not, however, stop with this answer to the specification, but proceed to consider it in connection with the 5th, the essence of which is, the alleged fraudulent intent and the positive order to Cooper to receive the blankets, without any discretion on his part.

Let us then discuss the specifications together, for they are not separable in the argument, the order to Cooper in the 4th being part of the transaction, of which the order to Stephens set out in substance in the 5th is but a sequence and the necessary result of the order to Cooper.

To build up these specifications, the prosecution exhausted much time, devoted great labor, and manifested a skill, persistency, and ingenuity worthy of a better cause. It has all been thrown away.

The proof triumphantly vindicates the Surgeon General from the imputations thus cast upon his honor, in protection of which against these aspersions, let it be remembered, he threw open the door to the fullest enquiry, letting in, without objection, much irrelevant testimony, and relying with unshaken confidence upon the integrity of his motives and conduct, which he knew any truthful testimony must vindicate.

The substance of the facts given in evidence by the prose-

cution in connexion with these two charges, may be condensed as follows; it being the purpose of the accused to set them out with entire fairness, and so far as he can, within the time limited for his defence, *in extenso*.

The case then supposed to be made is: that about the 1st or 2d June, 1862, Dr. Cooper, the Medical Purveyor at Philadelphia, received from Mr. Stephens samples of white Union Mackinaw blankets, as they are called, 8 pound to the pair, the price of which was stated to be $5 per pair; that on or about the 2d June, 1862, he exhibited this sample to Mr. Paton, an importer of blankets in New York, and Mr. Paton says he could have duplicated them for from $3.25 to $3.50 per pair, and he thinks they corresponded with the samples which have been exhibited in Court, and which are part of the lot of 8,000 pairs delivered by Stephens under the order of the accused, set out in the 5th Specification; that these sample blankets remained in Cooper's office in Philadelphia until the 13th day of June, when they were taken away by Stephens, and then and up to that time Cooper had refused to buy the blankets; that in the meanwhile Stephens had written a letter to the accused offering to sell him 8,000 pairs of such blankets at $5 per pair. That Stephens, having taken his samples from Cooper's on the 13th June, transmitted them to the accused by express, and they were received by him on Saturday the 14th June; that Stephens, on the same day he despatched the samples, wrote a letter to the accused, to wit., the 13th June, in which he informed him he had sent the samples by express, and the blankets which he had in his former letter put at $5 per pair, could now be sold at $4.60, if he took the whole lot of eight thousand pairs; that on Saturday, the 14th June, the accused, after the receipt of the samples, wrote the two letters or orders set out in the 4th and 5th Specifications to Cooper and to Stephens respectively; the one to Stephens being addressed to him at his residence in Girard street, Philadelphia, although in the letter to Cooper, he had given Cooper, Stephens' address to his box in the post-office, New York; that Cooper received the letter of the 14th on Sunday, the 15th June, and immediately wrote to the accused a letter, of

which a copy is put in the record; on the morning of the 16th June, Stephens called upon Cooper at his office, showed him the letter of the accused, and told him the price of his blankets was $4.60 per pair; Cooper agreed to receive them under the order of the accused, given to him, of the 14th June; they were received by him, on or after the 21st June; the bills were certified by him to the Surgeon General's office, and paid without his knowledge; that he never received from the accused any reply to his letter of the 15th, unless the telegram of the 17th June, telling him to do as he pleased about the blankets, was a reply, and that came after the transaction was closed; and that all the letters, to wit: Stephens' first letter to the accused; his second letter of the 13th June; the letters of the accused to Cooper and Stephens of the 14th June, and Cooper's said letter of the 15th June, are not to be found among the files or records of the Surgeon General's office.

This unquestionably creates a strong suspicion as to the whole transaction. The case made by the accused is not dependent wholly on the fading or treacherous memory of witnesses, but resting on contemporaneous writings, forming links in the chain of the transaction, and explaining much that is otherwise mysterious, sustained and welded together into a complete chain by the oral testimony of living actors in that business, leaves no room to doubt that so far as the accused is concerned he is free from a shade upon the perfect integrity of his connexion with the matter.

The answer is:—

It is proved by the letter written by Stephens to Cooper, and produced in evidence by the prosecution, that the sample blankets received by Cooper on the 1st or 2d June, 1862, were sent by Hayes, and not by Stephens. They were not samples of the lot of 8,000 pairs subsequently sold by Stephens on the 16th June. It follows that Mr. Paton did not see a sample of this last lot. Stephens swears he himself never saw the samples so sent by Hayes.

It is proved by Vail, Spaulding, Andrews, Hayes and Townsend, that the samples of the blankets so sold on the 16th June, were not delivered to either of the brokers until

four or five days before the sale was completed. It is proved by Stephens that he wrote to the accused his first letter before he saw the sample, and he received the sample on the 12th June, that he transmitted that sample by express on the same day from New York to Philadelphia, and the next morning, the 13th June, took it from the express office himself, and carried and exhibited it to Cooper, and then failing in making a sale to him, despatched it by express the same day to the accused at Washington: that on the evening of the same day he wrote the letter of the 13th June, and put it into the lamp post-office after the hour of delivery, so that it could not have reached Washington before Sunday, the 15th June.

It is needless to enquire how it is, wherefore, when, by whom those original letters were taken from the office of the Surgeon General. We do not know. That the office was tampered with by some one is shown by Dr. Smith's evidence and by the fact that letters were taken from it. Two of these letters are before the Court, one produced by the Judge Advocate from the papers of Surgeon Laub, the other produced by the accused, and coming to his possession as mysteriously as that did to Surgeon Laub. The authenticity of the papers is beyond dispute. We will presently see this is not all of the proofs. It is charged, and the attempt has been made to show that these blankets were unfit for use in hospitals; had a foul and offensive odor, and were purchased at an exorbitant price.

The proof on these points is equally decisive. As to their unfitness for hospital use in their present condition, a sufficient and complete answer has been already given. But Dr. Cooper and Mr. Guillou, to whom he says he exhibited them, say the odor was very offensive when they were received. To this we reply, Dr. Cooper is the only witness to show they were the same blankets as those of which Mr. Guillou has testified: the clerks in Dr. Cooper's office, those who received them when they were first delivered, and those who delivered them when they were disbursed; who marked each bale so disbursed, who were daily conversant with them while they remained in the purveyor's office; to wit: Mr.

Garrigues, Elliot, and Nichols; Mr. Spaulding, who sold them, and Mr. Townsend, the broker, who purchased them, and Stephens, who searched for the four missing bales in the office of the purveyor, all concur in an emphatic denial of such offensive odor. It cannot be true that they had such odor.

The price has been assailed. The answer is a mass of overwhelming proof to show that such blankets were exceedingly scarce in the market; that there was not more than one other lot like them, and that was at Watson's; the lot afterwards purchased by Townsend; that the price at cash sales were rapidly rising in the market, and we have the concurrent testimony of Carville, Vail, Spaulding, Toy, and the several brokers who were familiar with the transaction, that the sale to the Government at $4.60 per pair at that time, upon the terms in which it, the Government, was in the market was a fair sale. The weight is shown to have been what is purported to be—eight pounds to the pair.

Moreover, it is in evidence that Medical Director King had received instructions to prepare largely extended hospital accommodations in Philadelphia, for the sick and wounded from the inhospitable and bloody fields of the Peninsula, that Cooper's supply of blankets was short, and the demand communicated to him by Dr. King was pressing. There was no time for the accused to wait. His duty and his humanity called upon him for prompt and energetic action. He received an offer of 8,000 hospital blankets in a rising market at $5 per pair; he knew the urgent need of the service—he has sworn he never received, and he now solemnly avers he never received that letter of the 13th June; he acted at once, yet always as he said to Cooper in his letter presently to be noticed, subject to the considerate action of the purveyor, he ordered the blankets, and has not for a moment regretted it to this day, but justifies and vindicates that order.

A labored effort has been made by the prosecution in connexion with these two charges to show that Stephens realized a large profit from the sale of this lot of 8,000 pairs of blankets. The only purpose such a fact could serve, would be to show the price was exorbitant. This Court has no right to sift the transaction for any other purpose, and that

only so far as it may tend to show the Government was defrauded. Nor can it be of any service to the prosecution, if the evidence stops here. For whatever profits Stephens may have realized; however exorbitant the price may have been; however fraudulent the scheme by which such exorbitant price was realized, unless they go further, and show the accused so associated in it that they can say these orders were given for the purpose—with the intent to enable Stephens to perpetrate this fraud—they cannot impeach the accused, or find him guilty of these specifications. And he challenges an enquiry to that point, into any fact which shows complicity by him with any of the parties concerned in that sale. He has endeavored, with the aid of counsel, to discover any fact not fully and completely explained which so connects him with Mr. Stephens as to show any guilty knowledge on his part of irregularity on the part of Stephens, or anything but a fair business transaction. Indeed, there is nothing to show that he knew until long afterwards, that the sale had been completed.

To make this matter more clear, it is proved by Mr. Stephens, and by the letter of the accused to Cooper of the 17th June, that he had no personal acquaintance with Stephens beyond a brief interview with him in the winter of 1861–2; that Mr. Stephens was backed by Dr. Hartshorne, of Philadelphia, a man of known high repute, who was, in the language of the accused in that letter, responsible for him, and notwithstanding that, he in terms authorized Cooper not to take the blankets if he did not like them. So far his personal connection with the matter.

But in point of fact, the testimony of the New York merchants and brokers, and of Adolph and Toy, of Philadelphia, take away from the sale every taint of exorbitant price or fraudulent design. The transaction itself shows that Stephens bought at $4 cash, when the importers would not have sold to Government on credit; that he had to pay two and a half per cent. for his money, an additional one per cent. for the delay, and also the costs of transportation; to lose the value of the wrappers, and take two-thirds of his payment in certificates of indebtedness at a discount. The rates at that time ranged from 96 to 98, so that he realized

on this purchase rather less than ten per cent., and had to take the risk of waiting months for his pay. The result of the operation shows no exorbitant price; while there is nothing from which it can rationally be inferred, that the accused was actuated by any wrong motive in giving the order which he did.

The remaining point of this 5th Specification is, that in consequence of the order to Stevens from the Surgeon General, to turn over the blankets to Cooper, he Cooper was compelled to receive them, though they were at an exhorbitant price, and he had previously refused to buy them, thus depriving him of that discretionary power which as Medical Purveyor it is charged he was entitled to exercise. Now was Cooper so robbed of discretion in the premises, or was he in a position to receive or reject the blankets in question, as he thought fit? Unquestionably the latter is proved to have been the case. We will demonstrate it. The proof is that on the morning of June 16th, Stevens presented to him the order, or memorandum from the Surgeon General directing the blankets to be turned over. In this both Cooper and Stevens concur. The transaction began on the 14th June, with the communication from the Surgeon General of that date. It was a continuing transaction on the 16th, when the conversation between Cooper and Stevens occurred.

Stephens swears he had no such order as Cooper has described; the letter of the accused of June 17th also shows it, and it is not true that the interview closed the transaction. Dr. Cooper knew that it did not, for he has sworn that *if the blankets had not corresponded with the samples, he would not have received them*, and he knew just as well as do the members of this Court, that up to the point of actual inspection and receipt, he not only had the right the Government invariably reserves to itself to reject an inferior article or one that does not come up to sample, but it was his duty to do so, and it is in proof by Cooper himself, that the delivery was not until the 21st of June, thus giving him five days from the interview with Stevens and the delivery of the goods for action as to their receipt or rejection. Five days pregnant with information and instruction to Dr. Cooper, for as we have already clearly shewn, he

wrote to the Surgeon General on the 16th, after Stevens had told him the price was $4.60, and referred the matter to his superior, as the reply of the accused of the 17th clearly shows; and then on the morning of the next day, the 17th, he got a telegram from the Surgeon General telling him "*to do as he thought best about the blankets,*" which clothed him with absolute discretion to reject them, even if he had been previously directed to purchase or receive them, and this was followed by the explicit letter from the accused of the 17th, also, which he received on the 18th, in which the Surgeon General asks him if he is sure the blankets offered at $4.60 are the same as those offered the writer at $5—*tells him that whenever orders are sent him to make particular purchases it is of course with the full understanding that if he sees any objections to the purchase he is to refer the matter back to the Surgeon General for further instructions as he had done in this case;* that the Surgeon General did not know much about Stevens, having never seen him but once in his life—and closes with this absolutely conclusive passage, "IF YOU DON'T WANT HIS BLANKETS, DON'T BUY THEM AT ANY PRICE!"

In the face of such proof as this it is worse than idle for Dr. Cooper to talk about the Surgeon General having taken the matter out of his hands, and the fact that he had complete discretionary power in the premises is entirely too plain to require further discussion.

The next specification in order is the 6th, the points of which are, that on the 31st July, 1862, the accused knowing that the Wyeths had before that time furnished the Medical Purveyor at Philadelphia supplies inferior in quality, deficient in quantity, and of excessive price; did corruptly, unlawfully, and with intent to aid said Wyeth & Bro. to furnish further supplies, and fraudulently realize large gains therefrom, give Dr. Cooper, the Purveyor, an order to fill up his store houses so as to have constantly on hand, hospital supplies for 200,000 men for six months, and then and there directed said Cooper to purchase a large amount thereof to the value of $173,000, from said Wyeth & Bro.

As to the guilty knowledge of the accused involved in

this specification, Doctor Cooper is the sole witness, except so far as Keffer may be considered auxiliary to the extent of his testimony as to the single bottle of alcohol opened in his presence, when in the true spirit of a hawker he was trying to vend his own wares, and as to the luminous chemical suggestions he throws out upon the nature of fusel oil, and the tests by which its presence is distinguished, gathered from his workmen in the back shop.

Having sufficiently examined the value of any testimony given by Dr. Cooper, we content ourselves with calling the attention of the Court on this point to the letter to him from the Surgeon General of date July 29th, which he is shewn to have had in his possession at the time specified in the allegation, and the contents of which are in direct accordance with the suggestions Cooper says he made at that time to the Surgeon General, and equally in conflict with the oral instructions he says he *then* received from him. On the other hand Cooper admits that although previous to the personal interview with the Surgeon General of July 31, he had knowledge of these alleged deficiencies as to the quantity and character of those supplies, and their excessive price, he had never made to the Surgeon General any communication on the subject, oral or written, and although the Regulations require the Hospital Surgeons to make reports to the Purveyors of any such deficiency, he himself had not received a single official complaint from them, except from the Chester Hospital in regard to some of the liquors. It is not to be credited that at that interview he communicated to the Surgeon General the fact and extent of such deficiencies as he has stated, nor does Keffer sustain his statement, his testimony being confined to the bottle of alcohol opened in his presence, the short measure of which is clearly explained by the testimony of Mr. Harrison Smith, Dr. A. K. Smith, Mr. Frank Wyeth, and Hughes, who bottled the alcohol.

We are however not obliged to rest here; for the prompt action of the Surgeon General in sending first, Inspector General Perly to investigate the affairs of the Medical Purveyor's office at Philadelphia, and subsequently Surgeon Coolidge, to examine into the character of the medical sup-

plies in the Hospitals and Purveyor's office at that point, the moment complaints were made to him, is a pregnant circumstance to show that such information was not communicated to him by Cooper at the time charged in the Specification.

We say next that in point of fact, the defects in quality or deficiency in quantity of any of the supplies furnished by Wyeth & Bros., so alleged, are shewn by the proof to have been nothing beyond the isolated accidents inseparable from the execution of such large orders, which involved in their putting up great labor and minute details, under the pressure of circumstances demanding the utmost despatch in their preparation and delivery.

As to the character and quality of the drugs, medicines, and medical supplies furnished by this house, the concurrent testimony of every Surgeon who has been examined, viz: Dr. J. H. Thompson, who used them in the Burnside Expedition, when the purchase of them was directed by Surgeon General Finlay—Surgeons Magruder, J. J. Hayes, A. K. Smith, L. A. Edwards, R. O. Abbott, L. Baldwin, J. B. Rowe, E. P. Vollum, John M. Cuyler, Wm. Thompson, R. H. Coolidge, J. Hopkinson, J. Letterman, and Drs. Murray and Cox, Medical Purveyors, Mr. Farr, of the house of Powers & Weightman, who furnished them by far the largest part of their medicines, and who also put them up according to the supply table, Mr. Locke, who made the alcohol they supplied, and the high reputation of which is established by the standard authority of Wood & Bache's Dispensatory—and Mr. Harrison Smith, who purchased their liquors, teas and bottles, establishes the high character of the supplies they furnished.

Add to this, the admitted fact, that prior to the 31st July, no official complaint was made to the Surgeon General, of the quality or character of their medicines or the manner in which they were put up, it cannot be doubted that the Messrs. Wyeths dealt in entire good faith with the Government; while the isolated cases in which defective articles were found in the large requisitions they furnished, are shewn to have been met by them the moment their attention

was called to the matter, by a prompt replacement with unexceptionable articles.

It may be as well at this point to dismiss with very brief comment, the matter of the whiskey ordered by Surgeon Vollum, which Dr. Cooper had put into tin cans through a misapprehension of the order of Dr. Vollum, although with the whole transaction the Surgeon General had nothing to do; although many days of valuable time were wasted by the forced and wearying presentation of the subject to the Court.

To this branch of idle enquiry the accused interposed an objection, but at once withdrew it on the assurance of the Judge Advocate that he was to be connected with the enquiry by subsequent proof, which pledge was never verified; the accused being in fact wholly unconnected with the matter, as seemed sufficiently clear at the time, his utter ignorance on the subject continuing down to November, six months after the transaction, when his attention being called to the condition of some of the whiskey that had found its way into some of the hospitals at Washington, he ordered it to be analysed and withdrawn from use, except for external application. The Court cannot have forgotten with what gusto the Judge Advocate presented to his witnesses the unpleasant looking mixture he had extracted from one of these cans, ferreted out from the recesses of a hospital, carefully sealed up, and guarded in its transit thence to the cupboard of the Reeder Commission—where it was stowed away with the odds and ends of that Board of Investigation, and the hat-boxes of the witness Brastow, until it came to be submitted to the critical analysis of Professor Breed, who in his episodical attention to other pursuits for several years, seemed to have forgotten his Chemistry.

Let the Court, if it really deems it necessary, contrast with all the fanciful hypotheses and violent strainings, after undiscernable poisons in this whiskey, the complete exhaustion of the whole story of its condition when it was shown to the Court, developed in the masterly analysis of Doctor Woodward and Professor Schaeffer, each word of whose testimony demonstrated their right to be considered Chemists,

and that they had fully and patiently evolved from the turbid liquid the evidence of its original soundness, good quality and perfect freedom from adulteration, and the proof of that chemical action which beginning with the Tannic acid imparted to the whiskey by the wood of the barrels in which it was originally put, resulted in the destruction, to a great extent, of the Fusel Oil in it as in all whiskies, and left it as a necessary result of the oxidation that ensued, in the peculiar condition in which the Court enjoyed the privilege of seeing it.

So far the defence has been limited to the evidence of the order having been given by the accused to purchase the alleged large amount from the Wyeths, his knowledge of the defects complained of, and the fact whether such complaints were founded in fact, if any such were made.

But there is another point founded on this allegation which he feels bound to notice before leaving it, and that is the amount of that requisition.

In asking the attention of the Court to that matter he takes the liberty to refer to a public document, part of the history of the country, to show that such large orders for supplies were not made in the dark, nor from any corrupt motive, but as part of his immediate duty, looking to the end of having supplies secured before the price of every article should have been increased by the necessary course of events, and that he might have them ready for every emergency.

In his report to the Secretary of war, date 10th November, 1862, published among the documents transmitted to Congress, at page 9, he says: "large depots of medical supplies have been established at New York, Philadelphia, Baltimore, Fortress Monroe, Washington, Cincinnati, Cairo, St. Louis, and Nashville, and have proved of incalculable advantage to the sick and wounded. Moreover, large sums have been saved by the accumulation of stores before the recent advance in prices took place."

It is in evidence in this cause, in repeated instances, undesignedly stated by Dr. Cooper, and confirmed by other witnesses, and it is obvious to reason that such large depots

were absolutely necessary. It requires but a glance at the supply table for three months for a hundred men—still more to cast your eye on the very requisition in controversy, and see the vast amount called for by it, and the manner in which those supplies were required to be put up, in small phials, in safe packages, to satisfy any one, that it would require a long time and great care and labor to prepare even for a thousand men. In this city alone and its surroundings there were in the months of July and August, 1862, nearly 20,000 men in hospital: the struggle between Lee and Pope was going on, and it would have been such gross neglect of duty as would have justly subjected the accused to the censure of his superiors and the public if he had failed to make ample provision for impending events. But this is only a limited view of the matter. The West and South and South-West, all were alive with the evidences of coming conflicts, and they also were to be provided for. Every article in the supply table was rising daily in the market, and on all accounts it was his duty to exercise a wise forecast in making ample provision, so that no one should suffer by his neglect and the treasury would be relieved by his prudence.

Here again we have a motive tending fully to explain the amount of that requisition, a motive which his judgment, his humanity and his patriotism could not overlook.

If from his past experience and information as to the character, quality and quantity of the drugs, medicines and hospital supplies furnished by the Wyeths; the promptitude, skill, energy and despatch with which they had theretofore furnished them; looking to the threatening aspect of the armies in the field, and knowing the condition of the hospitals; anxious to be provided in time for every contingent event, and that the supplies should be on hand to meet every hurried demand, he had given directions to have the larger portion of that order filled by them, there would have been no just or reasonable ground of complaint in a military point of view, nor room for suspicions as to his integrity, much less would it afford a scintilla of proof of a corrupt motive. When the pressure of circumstances so momentous as those surrounding him furnishes a reason for his conduct,

it would be not only unjust but cruel to impute to him a bad or dishonest motive. If we can see in this order any other than a desire to benefit the Wyeths; if we can see a high sense of duty and responsibility underlying the whole transaction; if we can see the wounded and the dying on the battle-field, and the sick and wasted in the hospitals stretching forth their hands and crying for help, and the officer charged with the duty has made ample provision for them in anticipation of their needs, we should not stop to criticise too severely and ask whether in furnishing those supplies he did not mean to help a friend. The burthen of proof is upon him who alleges such a bad motive, and he must put it beyond a peradventure. There must be no room to doubt. The act must be so characterized as to leave no question as to the motive being wrong. If it were not so, God help every officer who does not carry with him a glass in his bosom by which his motives are to be seen, for by his acts he is not to be judged.

It is denied distinctly, emphatically, positively, in the detail and in the aggregate, by the accused, that any base or sordid motive, any desire to favor a friend at the expense of his duty entered into or formed any part of this order for the supplies; it is denied with equal directness and distinctness, that he gave any direction to have any particular part of it supplied by the Wyeths; it is denied that he received from Dr. Cooper the information which he says he then gave as to the failure of the Wyeths in their former transactions either in the quality, weight, or quantity of their supplies; and at the same time he maintains that if he had received such information from Cooper, not vouched for by any report from any officer having charge of those drugs, medicines and supplies, and relying upon his own personal knowledge and the information of others as to the manner in which they had theretofore filled their contracts, he would have been fully justified in giving the order, and the proofs in this cause already given would have sustained him in so doing.

The 7th specification of this first charge gives rise to the question as to the true construction of the Act of the 16th

April, 1862, as well as that of the motives of the accused in himself ordering extract of beef from the Wyeths. It is that *contrary to* the provisions of that act he did *corruptly* and unlawfully direct Wyeth & Brother to send 40,000 cans of their extract of beef to the different places named in the order, and send the account to the Surgeon General for payment; and which extract of beef so ordered *was of inferior quality*, *unfit for hospital use*, *unsuitable*, and *unwholesome* for the sick and wounded in the *hospitals*, and *not demanded by the exigencies of the public service.*

The specification is skillfully drawn. It exhibits the ingenuity of the special pleader. Yet if it were subjected to the crucible of the courts administering the common law, it is fatally defective, and on demurrer would be pronounced bad. It includes a number of distinct offences. So much so that it defies the ingenuity of the accused to determine what specific allegation he is to meet. Is it that every purchase made by him since the enactment of the law is wrongful and unlawful? Is it that to make it unlawful and wrongful it must be corruptly made? Is it, in the particular case, that the article purchased was inferior in quality? or that it was unfit for hospital use? or that it was unsuitable and unwholesome for the sick and wounded in hospitals? If it shall appear from the law that he had the power to purchase; that the article was sound, wholesome, admirably adapted to the battle-field, to sudden emergencies, to a thousand cases, but *not suited for hospital use,* can the specification be maintained? or must all the averments of the specification be proved? or is proof of any one or more of them sufficient to sustain a conviction?

In some circumstances these would all be material questions for the consideration of the Court, and the accused might confidently, as he does, insist that every fact thus severally and specifically alleged, not by way of aggravation, but as constituting parts and parcels—necessary ingredients in the offence intended to be assigned must be proved to the satisfaction of the Court; that they in combination constitute the offence charged, and cannot be found in part in order to sustain the specification.

Not waiving any one of these points of objection, but relying on them, the accused, as he has done throughout this case, meets the accusation in each and every of its particulars, satisfied that the more rigidly his administration of his office, and all his acts connected therewith are examined and criticised, the more triumphant will be his acquittal of any charge or allegation affecting his honor as a man, or his duty as an officer.

The fact that he gave the order set out in the specification is not disputed. It was done, as all his other acts were done, in the conscientious discharge of the duties imposed on him by law. His construction of that law has been given in part; but that construction does not fully cover the case now put.

The assumption on the part of the prosecution is, that he is thereby prohibited from making any purchase; that *all* selections and purchases are to be made by the Purveyors; and every purchase made by the Surgeon General is wrongful and unlawful.

It is a grave question. It deserves to be considered with all the care which its importance in this particular case requires; but still more in its bearings on analogous cases in other branches of the service.

The statute does not say, in terms, *all* purchases shall be made by the Medical Purveyors. The words are: "The Medical Purveyors *shall be charged*, under the direction of the Surgeon General, with the selection and purchase," &c. They are *to be charged*. The *law* does not charge them. The law does not say they are "*hereby charged*," but *shall* be charged. By whom are they to be charged? They are to be charged under the direction of the Surgeon General. The words of the statute do not in terms prohibit a purchase by him who, as the head of the office, is to direct another. Nor do they, by necessary implication, exclude the Surgeon General himself from purchasing. They do exclude the Purveyor from purchasing of his own volition. He must have the direction of the Surgeon General. And so in regard to the Commissary and Quartermaster's Department, and the various other bureaus of

the several principal branches of the executive authority. In each and all of these the power is given to direct purchases to be made; to appoint agents for that purpose; to devise checks and balances to secure a proper accountability. Here the only difference is, that the law points out the agents to be employed, so that neither Inspectors, nor Directors, nor Surgeons in the line or in hospitals, shall be charged with the duty of selecting and purchasing, unless they are also Purveyors.

An illustration may be drawn from the laws empowering the Quartermaster General, and the Commissary General and the head of the Ordnance Bureau to make contracts. They all make contracts subordinate to the superior authority of the Secretary of War; they all delegate the authority to their subordinates to make contracts or obtain the necessary supplies. Undoubtedly contracts so made are valid contracts, and would bind the Government, although there may be no statute authorizing them. Nor could the officer making them be charged with a wrongful and unlawful act, and subjected to a Military Court, unless it could be further shown that they were corruptly made. And so an officer in the field commanding an army, or having a detached command, has and must have, by virtue of his office, power to make contracts for supplies, with which the Quartermaster's Department is charged by law. The illustrations are numerous, and recur readily to the mind of every one practiced in military affairs. But they are none of them strictly analogous. None of them are cases where, by the express words of the law, a particular subordinate officer is to be charged, under the direction of his superior, with power to purchase, and the discretion is left to the superior. Such is the case here.

And the whole scheme and policy of the administration of the Medical Department, as developed in the act creating the office of Surgeon General, and the laws and regulations subsequent to it, and the practice of the office grown into a usage, as shown in the proof, are consistent with this view. He is the administrative officer. The rest are subordinates, given to him as aids to effect the purposes of his office. He

cannot multiply himself, so as to carry out all the details of the service, but he is held accountable to the country for a faithful supervision of those subordinates, and a wise, prudent, and faithful discharge of his own powers and duties. Among these duties none is more important than the preparation, in due time, of fitting supplies to meet the constantly recurring demands of his office. The Purveyor is given to him for that purpose, but he is made entirely subordinate, without power to make a purchase except under his direction, and no Purveyor, as we have seen, can make a purchase unless he is "*charged*" with that duty, under the direction of his superior. It follows that as the duty of providing the supplies exists, and is imposed on the Surgeon General by virtue of his office, and the regulations of the President, and the usages of his office, he must have the power both to purchase himself and to *charge* a Purveyor with that duty under his direction. The power then exists, and he may lawfully exercise it himself or *charge* a Purveyor with it.

If the power exists, and whether it does or not, we proceed to examine the manner in which, and the circumstances under which it was exercised in this case. And if ever the exercise of a questionable authority was justified or excused, the evidence discloses a condition of things which affords justification and excuse to the accused for the acts set out in this specification. If the Court shall doubt as to the power of the accused, exercised as it has been by his predecessors, without objection or complaint, it is far better to leave the remedy to Congress than by their judgment to subject him to censure, if he has acted in good faith, believing he had the power.

The remaining questions under this specification are: Did he act corruptly? Was the extract of beef, so ordered by him, *inferior in quality?* Was it *unfit for hospital use?* Was it *unsuitable* and *unwholesome* for the sick and wounded in the hospitals? Was it or not demanded by the exigencies of the public service?

The history of the introduction of this article into the service of the army is exceedingly well given in the testi-

mony of Mr. Coleman. The origin of its manufacture by Wyeth is also very clearly shown in the proof. There was at the time this order was given, no other preparation of the like kind known to the Department, but that of Mrs. Murringer. Such is the concurrent testimony of all the witnesses except Dr. Cooper.

It had been tried on the Peninsula, and its virtues in part ascertained, and antecedent to the order in question the bloody field of Bull Run had demonstrated the value of the preparation, and the Court cannot have forgotten the testimony of Inspectors Coolidge and Vollum, whose simple and touching narratives of its use on that occasion, brought so vividly to view the picture of the thousands of wounded and suffering soldiers, who, after the sad catastrophe of that battle, were in the absence of almost all other sustenance nourished and kept alive by the timely supply of this very article, administered to them for successive days by these witnesses, who were thus enabled to save, as they have sworn, the lives of thousands of our soldiers not simply by the intrinsic nutriment of the extract, but because of the peculiar facility and rapidity of its preparation for use.

Such testimony is sufficient of itself to justify its purchase by the accused; but the proof in its favor goes much beyond this; for although the prosecution consumed many days, and questioned a score of witnesses upon this point, the only instances in which unfavorable testimony was elicited, were the cases of Doctor Brinton, who tried a can of it on the road to Gettysburg and thought it did not agree with him, but who nevertheless testified that he issued large quantities after that battle, to the amount of thousands of cans, and never heard any complaint, save from one Surgeon, who thought some of the cans he received were defective; and Surgeon Perrin, who wrote from Cincinnati that twenty hundred and forty cans of the lot sent to him were decomposed, assigning therefore as his reason, a test, which both Drs. Woodward and A. K. Smith, clearly proved to be entirely valueless. Some Surgeons were also examined, who preferred beef tea freshly made for use, in permanent

hospitals, but who had no personal experience of this particular article, and whose speculative opinions do not weigh against positive proof. On the other hand Dr. Weir Mitchell, of Philadelphia, one of the most accomplished physicians in the country—Surgeons Brewer, Hoff, A. K. Smith, Cuyler, Thompson, Hopkinson and Letterman, besides Surgeons Coolidge and Vollum, all bear witness in unequivocal terms, from their own experience, and some of them from an extensive use of it, to its good quality, its great facility of preparation, its highly nutritious elements, and the fact that it is a most valuable preparation for Field Hospitals, and the exigencies of the battle field, while several of them even prefer it to the fresh tea for permanent establishments.—Surgeon Brewer was conclusive in his proof of its efficacy, and Surgeon Hoff testified that in his experience on the Mississippi where he issued large quantities, he could not have got along without it. Purveyors Creamer and Rittenhouse, who issued thousands of cans from St. Louis and Cincinnati never received a complaint from any quarter either as to its value or condition. Additional evidence in its favor is also furnished in connection with the identical lot of which Surgeon Perrin too hastily complained, in the testimony of Inspector Coolidge, who tested in his own family, and with a wounded officer in this city, a number of cans forwarded by Dr. Perrin by direction of the Surgeon General for examination.

Such proof as has been thus briefly summed up, must settle the question of the allegations of its inferior quality, unwholesomeness, and unfitness for use with the sick and wounded.

The remaining question is, whether it was demanded by the exigencies of the public service. The prosecution, with all the power of the Government at its disposal, for the establishment of its theory, has been unable to discover more than a few thousand cans remaining on hand in the storehouses at Philadelphia, Washington, Cincinnati and St. Louis, and that residuum made up in fact not only of Wyeths and Bowers', but of Tourtellot's, Tilden's, Ellis', and Mrs. Murringer's—a supply which may be exhausted by the con-

tingencies of momently impending conflicts, whose sad catalogues of sick and wounded will we think, sufficiently vindicate the wise prevision of the Surgeon General, in providing for contingencies only too certain to follow in the train of a bloody and protracted war.

And here allusion may be made to the fact that in order to obtain for his department medical supplies of certain purity and less price the accused, more than fifteen months ago, established manufacturing laboratories in New York and Philadelphia. Does this look like favoring private persons?

The second charge is of conduct unbecoming an officer and a gentleman, and the only specification is that the accused on the 13th October, 1862, wrote a letter to Dr. Cooper, stating that he, Cooper, had been relieved as Medical Purveyor at Philadelphia, because among other reasons Major General Halleck requested as a particular favor, that Surgeon Murray might be ordered to Philadelphia, which declaration of the accused was false.

There is scarcely any part of this prosecution which more clearly shows the venom of the principal witness brought to sustain it than this. He avails himself of a private letter, written in the kindest spirit, and in the confidence of the relations which the whole record shows had up to that time existed between himself and the accused, to inflict a deadly wound upon his honor, of a character from which every gentleman shrinks, and which repels every one from him, whether in his official or his social relations. There is in this a degree of malignity, and a want of high toned principle exhibited, which alone should make us look upon all his testimony regarding the accused with the gravest suspicion.

A charge thus made with a specification so distinct, should be supported by the clearest, and most direct evidence. There must be no want of recollection, no doubt, no hesitation, no room for misapprehension in the proof brought to support it. The memory of the witness who is assumed to sustain it must be as distinct and clear as if the fact had been recorded at the time, and if possible it should be corrobora-

ted by some circumstance. The distinct affirmation of a fact made by an officer should have the same weight with his peers, (although not admissible as evidence) on his trial, as if he had sworn to it, for it may be assumed without fear of successful contradiction that in ninety and nine cases out of a hundred the officer who would make such a statement in writing would swear to it.

We have in this case the averment of a fact in writing, made by the accused at the time of the occurrence—made without any adequate motive to say what was false, yet made under all the solemn obligations which can bind a man of honor, holding a high rank in the confidence of his Government, and when the means of contradiction and the danger of discovery were both convenient and certain. For he knew the temper of the man to whom he was writing, and his promptitude and energy when he was aroused.

Now after the lapse of more than fifteen months passed in the midst of a pressure of public affairs, tasking his mind and memory to their utmost capacity of endurance, General Halleck is called to prove that he made no such request as the accused deliberately said he had made of him in October 1862. General Halleck, as was to have been expected, does not contradict him. He says at page 676, he wrote a letter about the 1st October, 1862, to the accused in relation to Surgeon Murray, which letter is put on the record at p. 677. At p. 678, "*to the best of his recollection,*" he says, he did not make any other communication to the accused upon that subject, not even orally. This is the whole of it. This is no such denial as is absolutely required to *disprove* the assertion of the accused. The prosecution has undertaken to prove that assertion to be untrue, and they must prove, *not that the witness does not recollect, but that he does recollect, and recollecting positively denies the fact.*

But this is not all. On the same page Gen. Halleck says he received a communication from Dr. Murray; "*to the best of his recollection,*" [the very words used in chief,] he said in a private letter, "I should like to go east on hospital duty." I do not think he designated any place; and I wrote the letter to the accused immediately after receiving Dr. Murray's letter, probably the same day."

That letter of Surgeon Murray to General Halleck will be found on pp. 716, 717 of the record, and in it he says, p. 717, "I want to be ordered to Hospital *duty in* PHILADELPHIA, New York, or some point north of these places. PHILADELPHIA *would suit me best.*" "*If you will send a memorandum to the Surgeon General's office, requesting him to order me to a Hospital in* PHILADELPHIA *it will be done at once.*"

The accused does not say Gen. Halleck asked him to make Murray purveyor, or to give him hospital duty, but to assign him to duty in Philadelphia, and he was not at that time assigned to duty as Purveyor. *How did he know that Murray desired to go to Philadelphia, and how did he know that he had so written to Gen. Halleck? It is quite clear those facts were known to him, and they must have come through Gen. Halleck, for the letter was a private letter*, and although Gen. Halleck does not in his letter to the accused ask that Murray shall be sent to Philadelphia, yet no rational mind can resist the conclusion from the evidence on this subject that Gen. Halleck did make the request in some personal interview, and in the vast amount and weight of other matters by which he was overwhelmed, has forgotten it as he forgot that Murray, his friend, applying to him for aid, and whose cause he espoused, asked him to do precisely what the accused says he did do, if not send a memorandum, at least request the accused to order Murray to Philadelphia.

It is no reproach to General Halleck to suppose he has forgotten a comparatively trivial private matter, while it would be unmitigated disgrace to the accused to find him guilty of fabricating a falsehood so idle and purposeless as that with which he is herein charged.

The accused knows that he made no intentional misstatement of the wishes of Major General Halleck, and he is positively sure, and avers that he had a conversation with him, in the course of which reference was made to the transfer of Doctor Murray to Philadelphia, and he cannot believe that a Court of the high character of the one required to decide this question, will do him the injustice of attaching criminality to a matter so easily and naturally explained by the suggestive circumstances surrounding it.

As to the third charge and the two specifications under it, the accused hesitates to make any reply.

He is charged with conduct to the prejudice of good order and military discipline. 1st, that on the 8th November, 1862, he did unlawfully and corruptly order and cause Henry Johnson, Medical Storekeeper and acting Purveyor at Washington City, to purchase three thousand blankets from from one J. P. Fisher, at the price of $5.90 per pair, to be delivered to surgeon Cooper at Philadelphia.

There was a clerical mistake in the order to purchase these blankets from J. P. Fisher, it should have been T. J. Fisher. The order was not given by the accused personally, but by one of his assistants, and that fact stands out palpably as known to the prosecution. Yet much was sought to be made of this, as though it were a badge of concealment. The proof on the part of the government is conclusive, first, that the blankets were required by Cooper. His letter is in the record. Second, that he could not get them in Philadelphia. Third, that T. J. Fisher offered them to the accused when they were thus needed, and the accused directed Mr. Johnson to buy them at a price which was below the market price, and Johnson did buy them and they were sent to Cooper. The witnesses are T. J. Fisher, Mr. Waterbury and acting Purveyor Johnson.

It is difficult to conceive the motive which prompted this specification, when not only is there a total absence of proof on the part of the prosecution to show any corrupt motive in the accused, but the evidence produced by them, independent of the explanation given by Mr. Fisher and Mr. Waterbury, shows the public need demanded the blankets to be sent to Cooper, and there is not a particle of proof to show that the charge was too high; and the very "*direction*" given by the accused to the Acting Purveyor was within the letter and spirit of the Act of 16th April, 1862.

And the second Specification of this charge, that he did on or about the 3d December, 1862, *unlawfully* and *corruptly* purchase or caused to be purchased of J. C. McGuire & Co., large quantities of blankets, and bedsteads, *which were not* needed for the public service, is like its immediate predeces-

sor, a wonder and surprise, for it is not only not proved, but is disproved by the prosecution itself.

Under these two specifications and this third charge, the prosecution has taken a roving-commission; has put Brastow and Breed on the trail; the witnesses have moused about in the storehouses and hospitals, explored the Insane Asylum, and with marked evidences of unsound condition in themselves, have found unsound whiskey not fit for any kind of use, and unsound chemistry to demonstrate its unfitness; unsound tea, and a most uncertain source of its supply; and that the unhappy inmates of the hospital who fell into the hands of this corrupt and reckless head of the Medical Department, were deprived of the right of spending their hospital money, not the money of the Government, as their hospital stewards and surgeons saw fit, and compelled to take wholesome fresh, daily, hospital supplies at cheaper rates, furnished in a more convenient mode. Beyond this they have found that Fisher and McGuire supplied better articles at a cheaper rate, with more expedition and certainty than any one else, [so swears Dr. Laub, and he is no friend of the accused]; that Kidwell and Cissell supplied drugs and medicines, and even extract of beef, at Philadelphia prices; and Cozzens, Tarragona and other wines of fine quality at a fair price; they have also found that in some instances the accused directed articles to be purchased by the Purveyor in charge, in others approved contracts made by him, and in others ordered him to procure supplies, which the Purveyor translated into orders to get them from particular persons.

And this is no distorted or exaggerated statement of the outline of these two specifications—specifications as earnestly pressed as those involving the dealings with Stephens and Wyeth, but they lacked the support of Dr. Cooper or his distinguished friend Mr. Keffer, the distiller of alcohol, who rubs his spirit on his hands to see whether the fusel oil in it will glue them together, and who examines liquors at a hospital by the request of certain physicians, one of whom did not know him, the other was not there, and had never seen him, and neither of whom had asked him to do any such thing.

If Cooper and Keffer could have been added to Breed and Brastow—Brastow brought up in a country store, to attain knowledge and skill in the inspection of blankets, teas and liquors, and to head a commission to investigate the condition and affairs of the medical department of the largest army in the civilized world—if they had only been associated in the explorations here, there is no telling what might have been the result. As it is they had only Dr. Laub to tell the truth so far as his memory would assist him, and Brastow and Breed to give the coloring.

Under these specifications the prosecution has introduced the proof in regard to the quality of the bedsteads supplied to the Department; their number and value; and with the contracts present made by Dr. Finley, the immediate predecessor of the accused, with Fisher in the month of April, 1862, and in progress of execution when the accused came into office, has strenuously labored to exclude those contracts from the notice of this Court, while it has as strenuously endeavored to charge all the bedsteads furnished under them to the administration of the accused, especially and particularly those furnished to Dr. Satterlee. It has endeavored to show that Fisher charged widely different prices for the same article, and the higher price was approved, and when driven from this ground by the force of the irresistible testimony of Fisher and Dr. Murray, the prosecution falls back on the last contract made by Dr. Murray with Mr. Fisher as proof of the exorbitant character of the others, and, such is the tenacity of purpose with which a conviction is sought to be obtained, when Mr. Fisher shows conclusively that he lost money on that contract, and only took it to avoid a greater loss on material prepared and on hand to fulfil a previous contract which he well believed he had made, the prosecution again falls back on the oral orders which it is supposed were from time to time given by the accused, and does not yield when it is proven the accused never gave Fisher an order in his life. It would be a waste of time to pursue this matter further. There is an absolute failure of proof.

And so, as to the blankets referred to in the same specifi-

cation—needed by the Government—bought by Fisher for cash—sold to the Government on credit—a good article at a fair price—purchased by the Purveyor by direction of the accused, what can be said upon the proofs here to show a corrupt motive in so plain a case of a simple discharge of duty.

And so as to all the supplies furnished by McGuire and Fisher, in fitting up the numerous and extensive hospital churches with promptitude, energy and despatch for the reception of the sick and wounded, the wasted, and worn soldiers from battle-field, and hospital, who were being crowded into this city.

If there is an act in the life of the accused which merits commendation, it is this very action, now made the ground of accusation, which enabled him to provide, as fast as they arrived, for the thousands of soldiers then poured into this city needing medical aid and treatment, and who without his earnest, ceaseless, watchful care and providence at that time must have been subjected to great suffering.

Dr. Laub himself confirms all this. But it may stand alone on the testimony of Mr. Fisher, who although at that time and long afterwards personally unknown to the accused, deservedly enjoyed, and still enjoys among his fellow citizens a reputation for integrity, fidelity and truthfulness that has no superior.

It remains, after the brief discussion of the several charges and specifications to which the attention of the Court has been invited, to task their patience for a few minutes longer in calling to their notice various matters which have formed, as it were, side issues in the trial of this cause. This is the more necessary because it has been found impossible, in the time allowed for this defence, to make an analysis of the testimony, such as it was the design of the accused to have presented, and which would materially have relieved the Court in their examination and consideration of it. It is so disjointed; the evidence relating to the same matters is so scattered throughout the volume and mass of the proofs; there is so much immaterial and irrelevant matter intermingled with it, that such an analysis is greatly needed, and the accused has to throw himself on the patient indul-

gence of the Court, so long extended to him already, while he briefly recalls some of those parts which may seem to have some bearing on the points really in issue, although to his mind they have not the remotest relevancy to them.

The principal grounds of accusation are: First, that he has exceeded his lawful power and authority in purchasing supplies himself; in directing supplies to be purchased from particular persons, and in prohibiting their purchase at a certain place. Second, that he has corruptly employed his office to promote the interests of particular persons, and a particular place, although he knew those persons had been defrauding the Government, and the exigencies of the public service did not require the purchase. Third, that he has unlawfully exercised his office in requiring Medical Inspectors to report directly to himself. Fourth, that he has told a wilful falsehood.

To each of these subjects matter the accused has, with the utmost brevity, but he hopes with clearness and precision, given his answers, resting on the evidence in the record, and a just and fair construction of the law, for his full defence. But, as he understands the matter, numerous facts, not set out or in any way shadowed forth by the specifications, or any of them have been introduced to give coloring to those really charged, or to qualify the motive by which the acts charged have been characterized; and however remote and irrelevant those facts may appear to him, it is proper he should take some notice of them.

Great stress has been laid on the fact that Mr. John Wyeth is not here, and he has even been spoken of as a fugitive from justice. Mr. Wyeth is not on his trial now. He is defenceless and absent. It is difficult to perceive how this bears on the truth or falsity of any one of the accusations against the accused.

The testimony of Col. Scott, late Assistant Secretary of War shows that before Mr. Wyeth made his final preparations to leave Philadelphia, he, Col. Scott, informed the Secretary of War that Mr. Wyeth was going as the agent of a company in which Col. Scott himself was largely interested, to explore a portion of the territory of Arizona, but having heard rumors of the developments made by the

Reeder Commission, he would not go if he was in any manner implicated by the report of that Commission. He was answered that the Secretary had not read the report, but he would let him know in a few days. The parties waited several days beyond the time indicated by the Secretary, and then hearing nothing from him, completed their arrangements. On the 20th Dec., 1863, Col. Scott was informed by the Secretary that a court martial would be ordered. On the same day Col. Scott replied that Mr. Wyeth must go; and asked if any changes were necessary before Wednesday, (the 23d,) to advise him. Nothing further was done, and Mr. Wyeth sailed on the 23d. The Government had the fullest opportunity to know when Mr. Wyeth reached California, and that he was there openly till some time in March. There was no concealment in his going; or as to his whereabouts afterwards; he is not and never was a fugitive from justice. So much is due to Mr. Wyeth. In his absence the accused has lost a most material, and important witness. He was ignorant of his intention to go at that time, and equally so of his having gone till after this Court was ordered. He challenges a scrutiny into the record in this cause for a scintilla of proof, that he was in any manner interested with John Wyeth, or any member of his house in any of their transactions with the Medical Department, or for any fact tending to show such interest.

And do in like manner the prosecution has drawn into this case an alleged failure of supplies immediately after the battle of Gettysburg. Under what specification all that evidence was admitted and how it bears on any one of them the accused is at a loss to discover. However that may be he confidently points to the evidence in the record of Purveyor Brinton, Inspector Cuyler, and Director Letterman, and to the whole testimony on that subject for his complete vindication from every ground of suspicion of neglect or want of foresight on that occasion.

And so in like manner, the evidence of Dr. Satterlee, as to the Port Wine purchased from Mr. Cozzens, and some of which Dr. Satterlee thought was bad. To what specification does that apply? That too is full and most satisfactorily explained by Mr. Cozzens, and put right by Purveyor Creamer.

And so as to the wines and teas purchased in the District of Columbia, of which no notice is given in any one of the specifications; wines and teas proved to be of excellent quality and bought at advantageous prices.

And so as to the drugs and medicines purchased from Kidwell & Cissell, with which no fault could be found.

And so as to the purchase of the remnants of Wyeths stock in the warehouse, a purchase which Dr. Murray has shown was made by himself, selected by himself, priced by himself, paid for by himself.

To enumerate all the other outside matters, having no direct bearing upon any one of the issues, and which are irrelevant and immaterial, would exhaust the patience of the Court, and he forbears to press them further on its attention.

The accused has now covered as fully as time and opportunity would permit, the chief points of accusation against him.

With skill and labor the law officer of the Government has sought to bring to the notice of the Court, the main facts and the minute details of the official connection of the accused with all the matters of alleged wrong doing. Unlimited in his power to collect witnesses and amass documentary evidence, the country has been traversed in search of the one, and the files of the Departments eviscerated for the other, and in the swollen record now open to the inspection of the Court, it is fair to assume is embodied everything that could be supposed to tell injuriously upon the official conduct and fair fame of the accused. He has been a deeply interested party to this trial, not because its possible issue involves the loss of official position. That is indeed something, but his good name is of infinitely greater value. His personal honor has been put in issue, and for it he makes earnest contest. Two years ago he went into the office of Surgeon General at the invitation of the President and with the confidence of the Government. Duties of the most important and various character instantly devolved upon him. His responsibilities were grave and heavy. The land resounded with the tread of immense armies, and their needs demanded from him prompt and earnest action. The rapidly developed necessities of these great armaments also re-

quired important changes in the organization of his Department, and much labor was needed to increase its efficient working. The changed condition of national affairs called for larger expenditures and larger views, and this, as the evidence shows, when ready money was not at his command. The reputation of the country demanded that the brave defenders of its highest interests, should be accompanied everywhere and under all circumstances with whatever an advanced medical science, and a thorough prevision of their wants could suggest. To do this—to do it completely, so that all probable contingencies of sudden demand should be confronted with an ample supply, and to discharge all his duties with no contracted ideas of an unwise and hurtful economy, but with a comprehensiveness bearing some relation to the magnitude of the great events in the midst of which he was acting, the accused confesses to have been his ambition. Doubtless his performance may have fallen short of his desire. Doubtless he may have committed mistakes of policy. Doubtless in the midst of engrossing duties he may have failed at times fully to satisfy the demands of the service. Of one thing however he is absolutely sure, that with right purposes and honest motives he has endeavored to discharge his duties, and upon careful revision of the record of this case, he sees in it no sustained aspersion of his honor. It shews that in all the multiplicity of the transactions it has disclosed, and in the millions of expenditures to which it has referred, no single witness could be produced, though all of them who had dealt with his Department were challenged to the proof, who casts upon him the shadow of personal corruption. Whatever of erroneous judgment, of unintentional error there may be, not only is no corruption shown, but it is positively disproved by the most emphatic evidence. The Court has heard the case with patience and courtesy. To it is now committed the judgment of his conduct, and the accused asks only a candid consideration and a just decision.

WM. A. HAMMOND,
Surgeon General U. S. A.

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